

CITY OF WENATCHEE, WASHINGTON

ORDINANCE NO. 2009-09

AN ORDINANCE of the City Council of the City of Wenatchee, Washington, establishing a line of credit relating to the Riverside Drive Local Improvement District in the City; fixing the terms of the Riverside Drive Local Improvement District Bond Anticipation Note in the principal amount of not to exceed \$3,000,000 to evidence the line of credit; and providing for the sale and delivery thereof to Cashmere Valley Bank.

PASSED March 5, 2009

This document prepared by:

*Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*

CITY OF WENATCHEE, WASHINGTON

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** The cover page, table of contents and section captions of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

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AN ORDINANCE of the City Council of the City of Wenatchee, Washington, establishing a line of credit relating to the Riverside Drive Local Improvement District in the City; fixing the terms of the Riverside Drive Local Improvement District Bond Anticipation Note in the principal amount of not to exceed \$3,000,000 to evidence the line of credit; and providing for the sale and delivery thereof to Cashmere Valley Bank.

WHEREAS, the City Council of the City of Wenatchee, Washington (the "City") adopted an ordinance creating the Riverside Drive Local Improvement District (the "Riverside Drive LID") for the purpose of constructing certain road improvements within the Riverside Drive LID (the "Improvements"); and

WHEREAS, the City intends to issue local improvement district bonds upon the completion of the Improvements and the confirmation of the assessment roll for the Riverside Drive LID (the "Bonds") to provide permanent financing for the Improvements; and

WHEREAS, in anticipation of the issuance of the Bonds and in order to provide interim financing for the cost of the Improvements, it is hereby found in the best interest of the City that a line of credit be established with Cashmere Valley Bank of Cashmere, Washington (the "Bank"), in the total principal amount of not to exceed \$3,000,000;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON, as follows:

Section 1. Definitions. As used in this ordinance the following words shall have the following meanings:

"Bank" means Cashmere Valley Bank of Cashmere, Washington, or its corporate successor.

"Bonds" means local improvement district bonds to be issued to pay and redeem the Note or any refunding note or notes.

“Code” means the Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings related thereto.

“Delivery Date” means the date of initial issuance and delivery of the Note to the Bank.

“Designated Representative” means the Mayor, Executive Services Director or Finance Director of the City.

“Interest Rate” means the variable rate equal to 85% of the Bank’s Prime Rate.

“Maturity Date” means two years from the Delivery Date.

“Note” means the not to exceed \$3,000,000 Riverside Drive Local Improvement District Bond Anticipation Note, 2009 of the City issued pursuant to the terms of this ordinance.

“Note Fund” means the City of Wenatchee, Washington Riverside Drive Local Improvement District Bond Anticipation Note Fund, 2009 authorized by Section 6 of this ordinance.

“Note Register” means the books or records maintained by the Note Registrar for the purpose of registration of the Note.

“Note Registrar” means the Finance Director of the City.

“Offer” means the offer of the Bank, dated February 25, 2009, attached hereto as Exhibit A.

“Outstanding Principal Balance of the Note” means on any particular day the aggregate of all funds which the City has drawn from the Bank pursuant to the Note to that day, less the aggregate of all principal payments on the Note made by the City on or before that day.

“Prime Rate” means the rate of interest publicly announced from time to time by the Bank as its “Prime Rate,” with the “Prime Rate” changing on the date each change in said “Prime Rate” is announced by the Bank. The “Prime Rate” may not be the lowest interest rate charged by the Bank on commercial or other extensions of credit.

“Request for Draw” means an oral or written request by a Designated Representative for a draw from the line of credit authorized to be established by this ordinance, all as more fully described in Section 3.

Section 2. Authorization of Bonds. For the purpose of providing funds necessary to repay the Note, the City shall issue its Riverside Drive LID bonds (the “Bonds”) in such amount and form and with such terms as shall be determined by ordinance of the City Council. The proceeds of the Bonds shall be paid into the Note Fund and applied, together with available funds, in amounts sufficient to repay the Note.

Section 3. Authorization and Description of the Note. For the purpose of providing all or part of the money required to finance the cost of the Improvements, and pay interest on and costs of issuing the Note pending the issuance of the Bonds, the City shall issue its Riverside Drive Local Improvement District Bond Anticipation Note, 2009, in the principal amount of not to exceed \$3,000,000 (the “Note”). The Note shall be in fully registered form, shall be numbered N-1, shall be dated the date of its delivery to the Bank (the “Delivery Date”), and shall mature two years from the Delivery Date (the “Maturity Date”).

Cashmere Valley Bank of Cashmere, Washington (the “Bank”) has offered to purchase the Note under the terms of its purchase offer dated February 25, 2009 (the “Offer”), and this ordinance. Amounts received from the Note shall bear interest on unpaid principal outstanding from time to time at the Interest Rate calculated on the basis of a 365-day year for actual number of days elapsed. The Interest Rate on the Note shall change on each effective date of a change in the Prime Rate. Interest shall be due and payable semiannually on each September 1 and March 1, and on the Maturity Date. The Outstanding Principal Balance of the Note shall be due on the Maturity Date.

The Outstanding Principal Balance of the Note on any particular day shall be the aggregate of all funds which the City has drawn from the date of the Note to that day, less the aggregate of all principal payments made by the City on or before that day. Interest on a particular principal amount so advanced shall be determined from the date of the advance of Note proceeds pursuant to a Request for Draw by the City.

A Request for Draw, in the minimum amount of \$50,000, pursuant to the Note may be made by a Designated Representative either orally or in writing to the Bank, at any time on or

prior to the Maturity Date. Each Request for Draw shall specify the dollar amount requested, the account number to which the drawing shall be wired and the proposed date of the drawing. The aggregate of all such draws on the Note may not exceed \$3,000,000. Principal amounts of the Note that are prepaid may not be reborrowed. Oral Requests for Draw shall include requests by telephone, telegraph, telex or any other means of communication other than by a writing signed by a Designated Representative. The City hereby delegates to a Designated Representative authority to make a written or oral Request for Draw pursuant to this ordinance. The Bank shall incur no liability to the City or to any other person in acting upon any oral or written notice or other communication which the Bank believes in good faith to have been given by an official or other person authorized to borrow on behalf of the City, or otherwise acting in good faith in making advances pursuant to this ordinance.

Section 4. Note Registrar. The Finance Director of the City is hereby requested to act as Note Registrar for the Note. The Note Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Note. The Note Registrar shall serve as the City's authenticating agent, transfer agent, registrar and paying agent for the Note and shall comply fully with applicable federal and state laws and regulations respecting the carrying out of those duties. The Note Registrar is authorized, on behalf of the City, to authenticate and deliver the Note in accordance with the provisions of the Note and this ordinance, to serve as the City's paying agent for the Note and to carry out all of the Note Registrar's powers and duties under this ordinance.

Section 5. Registration and Transfer of Note; Note Register. The Note shall be issued to the Bank only in registered form as to both principal and interest and shall be recorded on books or records maintained by the Note Registrar (the "Note Register"). The Note Register shall contain the name and mailing address of the owner of the Note and the principal amount and number of the Note.

The Note shall state on its face that the principal of and interest on the Note shall be paid only to the owner thereof registered as such on the Note Register as of the record date set forth

therein and to no other person or entity, and that the Note may not be assigned except on the books of the Note Registrar.

The Note may be assigned or transferred only in whole by the registered owner to a single investor that is a financial institution or a person who is reasonably believed to be a qualified institutional buyer or accredited investor within the meaning of the applicable federal securities laws. Any transfer shall be without cost to the owner or transferee, except for governmental charges imposed on any such transfer or exchange. The Note Registrar shall not be obligated to exchange or transfer any Note during the 15 days preceding any interest payment or prepayment date. When the Note has been paid in full, both principal and interest, the Note shall be surrendered to the Note Registrar, who shall cancel the Note.

Section 6. Payment of the Note. Both principal of and interest on the Note shall be payable solely out of the City's Riverside Drive Local Improvement District Bond Anticipation Note Fund, 2009 (the "Note Fund"), a special fund that is hereby authorized to be created and maintained by the Finance Director of the City, and shall be payable in lawful money of the United States of America. Interest on the Note shall be paid by checks or drafts mailed, or by electronic transfer, to the Bank on the interest payment date at the address appearing on the Note Register. Principal of the Note at maturity or prior repayment is payable at the office of the Note Registrar in Wenatchee, Washington, upon presentation and surrender of the Note.

The City covenants that on or before the Maturity Date it will issue the Bonds, refunding bond anticipation notes or a combination of the foregoing in an amount sufficient to pay the Note when due. If the City is unable to find an underwriter or Bank to purchase the Bonds, the City will purchase the Bonds as an investment of the City's Water/Sewer Fund.

Section 7. Prepayment Provisions. The City reserves the right to prepay the Note, in whole or in part, on any business day without premium or penalty. Advance notice of such intended prepayment shall be given at least 15 days prior to the date of such prepayment by mailing the registered owner a notice fixing the date and amount of such prepayment. Interest on the Note or the portion thereof so prepaid shall cease to accrue on the date of such prepayment.

The Note redeemed under this section shall be cancelled.

Section 8. Form and Execution of the Note. The Note shall be prepared in a form consistent with the provisions of this ordinance and state law, shall be signed by the Mayor and the City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

The Note shall thereon bear a Certificate of Authentication in the following form, manually signed by the Note Registrar, and only if so executed, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Note the fully registered City of Wenatchee, Washington, Riverside Drive Local Improvement District Bond Anticipation Note, 2009 described in the Note Ordinance.

By Mark Calhoun
Finance Director of the
City of Wenatchee, Washington,
as Note Registrar

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Note ceases to be an officer of the City authorized to sign notes before the Note bearing his or her facsimile signature are authenticated or delivered by the Note Registrar or issued by the City, that Note nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign notes. The Note also may be signed on behalf of the City by any person who, on the actual date of signing of the Note, is an officer of the City authorized to sign notes, although he or she did not hold the required office on the date of issuance of the Note.

Section 9. Preservation of Tax Exemption for Interest on the Note. The City covenants that it will take all actions necessary to prevent interest on the Note from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of the proceeds of the draws on the Note or other funds of the City treated as proceeds of the Note at any time during the term of the Note which will cause interest on the Note to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code is applicable to the Note, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Note, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Note from being included in gross income for federal income tax purposes.

Section 10. Designation of the Note as a "Qualified Tax Exempt Obligation." The City has determined and certifies that (a) the Note is not a "private activity bond" within the meaning of Section 141 of the Code; (b) the reasonably anticipated amount of tax exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) which the City and any entity subordinate to the City (including any entity which the City controls, which derives its authority to issue tax exempt obligations from the City or which issues tax exempt obligations on behalf of the City) will issue during the 2009 calendar year (the year in which the Note is issued) will not exceed \$30,000,000; and (c) the amount of tax exempt obligations, including the Note, designated by the City as a "qualified tax exempt obligation" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Note is issued does not exceed \$30,000,000. The City designates the Note as a "qualified tax exempt obligation" for the purposes of Section 265(b)(3) of the Code.

Section 11. Use of Note Proceeds. The principal proceeds of the Note shall be used to provide all or part of the money required to finance the cost of the Improvement and pay interest on and costs of issuing the Note. Until needed to pay those costs, the City may invest principal

proceeds temporarily in any legal investment, and the investment earnings may be retained in the Note Fund and be spent for the purposes of that fund. Any money remaining in the Note Fund after payment in full of the principal of and interest on the Note may be transferred to the general operating fund of the City, and the Note Fund shall be closed.

Section 12. Approval of Note Purchase Offer. Cashmere Valley Bank of Cashmere, Washington, has presented the Offer to the City offering to purchase the Note under the terms and conditions provided in the Offer, which written Offer is attached to this ordinance as Exhibit A and is incorporated herein by this reference. The City Council finds that entering into the Offer is in the City's best interest and therefore accepts the Offer contained therein and authorizes its execution by a proper City official.

A loan fee of \$15,000 shall be paid to the Bank at closing and may be paid from Note proceeds or other money of the City.

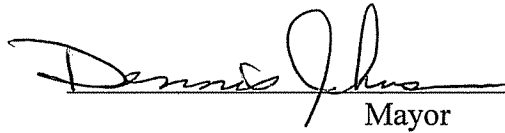
The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Note to the purchaser, and for the proper application and use of the proceeds of the sale thereof.

Section 13. Reporting Requirements. With respect to the Note, the City is exempt from the official statement and ongoing disclosure requirements of the Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934.

The City hereby covenants and agrees for as long as the Note remains outstanding, it will provide annually to the Bank copies of its audited annual financial report and each annual budget of the City as they becomes available.

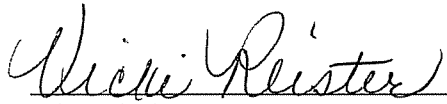
Section 14 Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council of the City of Wenatchee, Washington, at a regular open public meeting thereof, on the 5th day of March, 2009.



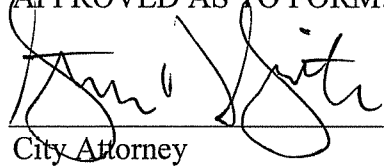
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT A
OFFER OF THE BANK



February 25, 2009

Mark S. Calhoun
Finance Director/Treasurer
City of Wenatchee
PO Box 519
129 S. Chelan
Wenatchee, WA 98807-0519

Dear Mark,

Thank you for the opportunity to propose an offer to provide a line of credit in support of the City of Wenatchee Riverside Drive Project Local Improvement District. Cashmere Valley Bank ("the Bank") has approved the borrowing facility outlined in this commitment letter under the following terms:

1. Issuer: City of Wenatchee (the "City")
2. Amount: \$3,000,000
3. Form: Registered Local Improvement District Bond Anticipation Note Line of Credit (Non Revolving) (the "BAN") issued by the City and purchased by the Bank at private sale.
4. Purpose: To fund interim construction costs and certain improvements related to the Riverside Drive Local Improvement District as well as BAN issuance costs.
5. Bond Terms:
 - a) Interest Rate: A fully variable rate of interest equal to 85% of prime rate calculated on an actual/365 basis.
 - b) Terms: The BAN will be structured with semiannual payments of interest and principal due at maturity in approximately two years all on mutually agreeable dates.
 - c) Transferability: The Bank will hold the BAN with no intent to sell or transfer. The BAN may be transferred only in whole to a qualified investor.

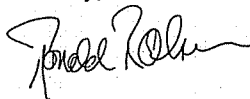
Cashmere Valley Bank Bellevue Office 1400 112 th Avenue S.E. Suite 100 Bellevue, WA 98004

- d) Draws: Draws can be made at anytime up to the maximum BAN amount, with a minimum draw amount of \$50,000.
 - e) Security: We understand that it is the intention of the City to repay the BAN with proceeds of the sale of a Local Improvement Bond (the "Bond"), or resources of the City's Sewer Utility Fund. The BAN can also be repaid from other available funds of the City.
-
- 6. Prepayment: The City may prepay the BAN in whole or in part at any time provided the registered owner of the BAN receives 15-days notice. The Bank will not charge a prepayment fee on any amounts prepaid by the City.
 - 7. Fees: A loan fee of 50 basis points (.50%) will be due at closing.
 - 8. Acceptance: This commitment is not binding unless the City returns a signed copy of this letter, via mail or facsimile, to the Bank prior to 5:00pm on March 13, 2009. If, after acceptance, the BAN has not closed by 5:00pm on March 20, 2009 this commitment will expire without notice.
 - 9. Additional Terms: The BAN documents will be in the standard forms customarily required by the Bank for municipal funding and will include additional terms and conditions not discussed above. The City will designate the BAN as a "qualified tax-exempt obligation" under Section 265(b) (3) of the IRS Internal Revenue Code of 1986, as amended, for investment by financial institutions. The City will provide its annual financial report to the Bank during the period the BAN is outstanding and held by the Bank. At the date of closing the BAN, the financial condition and credit of the City and all other features of this transaction will be as represented to the Bank without material adverse change.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Thank you for the opportunity to work with the City of Wenatchee.

Sincerely,



Ron Olsen
Director of Municipal Services

Acknowledged and accepted this _____ day of _____, 2009

Borrower City of Wenatchee

By: _____

Title: _____

cc: Nancy Neraas

CERTIFICATION

I, the undersigned, City Clerk of the City of Wenatchee, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 2009-09 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on March 5, 2009, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of March, 2009.

CITY OF WENATCHEE, WASHINGTON

Nicki Reister
City Clerk